REPRESENTING CHILDREN IN CONNECTICUT

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EVIDENCE 101

HEARSAY

RULES OF EVIDENCE

§ 8-3. Hearsay Exceptions: Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Statement by a party opponent. A statement that is being offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, (B) a statement that the party has adopted or approved, (C) a statement by a person authorized by the party to make a statement concerning the subject, (D) a statement by a coconspirator of a party while the conspiracy is ongoing and in furtherance of the conspiracy, (E) in an action for a debt for which the party was surety, a statement by the party's principal relating to the principal's obligations, or (F) a statement made by a predecessor in title of the party, provided the declarant and the party are sufficiently in privity that the statement of the declarant would affect the party's interest in the property in question.

(2) Spontaneous utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

...

(4) Statement of then-existing mental or emotional condition. A statement of the declarant's then-existing mental or emotional condition, including a statement indicating a present intention to do a particular act in the immediate future, provided that the statement is a natural expression of the condition and is not a statement of memory or belief to prove the fact remembered or believed.

FAMILY RELATIONS REPORTS

STATUTES

Conn. Gen. Stat. § 46b-3. Domestic relations officers and other employees.

Conn. Gen. Stat. § 46b-6. Investigations

In any pending family relations matter the court or any judge may cause an investigation to be made with respect to any circumstance of the matter which may be helpful or material or relevant to a proper disposition of the case. Such investigation may include an examination of the parentage and surroundings of any child, his age, habits and history, inquiry into the home

conditions, habits and character of his parents or guardians and evaluation of his mental or physical condition. In any action for dissolution of marriage, legal separation or annulment of marriage such investigation may include an examination into the age, habits and history of the parties, the causes of marital discord and the financial ability of the parties to furnish support to either spouse or any dependent child.

PRACTICE BOOK

§ 25-60. Family Division Evaluations and Studies

(a) Whenever, in any family matter, an evaluation or study has been ordered, the case shall not be disposed of until the report has been filed as hereinafter provided, and counsel and the parties have had a reasonable opportunity to examine it prior to the time the case is to be heard, unless the judicial authority shall order that the case be heard before the report is filed, subject to modification on the filing of the report.

1. (b) Any report of an evaluation or study shall be made in quadruplicate, shall be filed with the clerk, who will impound such reports, and shall be mailed to counsel of record. Said report shall be available for inspection only to counsel of record and to the parties to the action, unless otherwise ordered by the judicial authority.

(c) Said report shall be admissible in evidence provided the author of the report is available for cross-examination.

SELECTED CASES

O'Neill v. O'Neill, 13 Conn. App. 300 (1988)

Although Court may take account of parents' past behavior, it must determine the present parenting ability. Thirteen-month-old Family Relations report outdated and not probative of present parenting abilities.

Blake v. Blake, 207 Conn. 217 (1988)

Dad claims Court erred by relying on Family Relations report and psychological evaluation eight to sixteen months old. "The delay between their examination of each child and their testimony at the custody hearing simply affects the weight of their testimony rather than its admissibility."

Feinberg v. Feinberg, 114 Conn. App. 589 (2009)

Partial reliance on thirteen-month old Family Relations report not error where adequate information presented of present parenting abilities.

PSYCHOLOGICAL EVALUATIONS

PRACTICE BOOK

P.B. § 13-11. Physical or Mental Examination

(a) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, in which the mental or physical condition of a party, or of a person in the custody of or under the legal control of a party, is material to the prosecution or defense of said action, the judicial authority may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in the party's custody or legal control...

P.B. § 25-31 Discovery and Depositions
The provisions of Sections 13-1 through 13-11 inclusive, 13-13 through 13-16 inclusive, and 13-17 through 13-32 of the rules of practice inclusive, shall apply to family matters as defined in Section 25-1.

SELECTED CASES

State v. Porter, 241 Conn. 57 (1997)

Defendant appealed from court's refusal to admit polygraph results at this criminal trial. Held: Daubert v. Merrill Dow Pharmaceuticals, Inc. 509 U.S. 579 (1993) provides the proper threshold standard for the admissibility of scientific evidence in Connecticut, and polygraph evidence should remain *per se* inadmissible.

CODE OF EVIDENCE

§ 7-2. Testimony by Experts
A witness qualified as an expert by knowledge, skill, experience, training, education or otherwise may testify in the form of an opinion or otherwise concerning scientific, technical or other specialized knowledge, if the testimony will assist the trier of fact in understanding the evidence or in determining a fact in issue.

COMMENTARY

Section 7-2 imposes two conditions on the admissibility of expert testimony. First, the witness must be qualified as an expert. See, e.g., State v. Wilson, 188 Conn. 715, 722, 453 A.2d 765 (1982); see also, e.g., State v. Girolamo, 197 Conn. 201, 215, 496 A.2d 948 (1985) (bases for qualification). Whether a witness is sufficiently qualified to testify as an expert depends on whether, by virtue of the witness' knowledge, skill, experience, etc., his or her testimony will "assist" the trier of fact. See Weinstein v. Weinstein, 18 Conn. App. 622, 631, 561 A.2d 443 (1989); see also, e.g., State v. Douglas, 203 Conn. 445, 453, 525 A.2d 101 (1987) ("to be admissible, the proffered expert's knowledge must be directly applicable to the matter specifically in issue"). The sufficiency of an expert witness' qualifications is a preliminary question for the court. E.g., Blanchard v. Bridgeport, 190 Conn. 798, 808, 463 A.2d 553 (1983); see Section 1-3 (a).

Second, the expert witness' testimony must assist the trier of fact in understanding the evidence or determining a fact in issue. See, e.g., State v. Hasan, 205 Conn. 485, 488, 534 A.2d 877 (1987); Schomer v. Shilepsky, 169 Conn. 186, 191- 92, 363 A.2d 128 (1975). Crucial to this inquiry is a determination that the scientific, technical or specialized knowledge upon which the expert's testimony is based goes beyond the common knowledge and comprehension, i.e., "beyond the ken," of the average juror. See State v. George, 194 Conn. 361, 373, 481 A.2d 1068 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 963, 105 L. Ed. 2d 968 (1985); State v. Grayton, 163 Conn. 104, 111, 302 A.2d 246, cert. denied, 409 U.S. 1045, 93 S. Ct. 542, 34 L. Ed. 2d 495 (1972); cf. State v. Kemp, 199 Conn. 473, 476-77, 507 A.2d 1387 (1986)...